

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

BRANDON RUDOLPH KIMBLE,)	
)	
Plaintiff,)	
)	Case No. 22 CV 02717
vs.)	
)	
ROUNDY'S ILLINOIS, LLC)	Hon. Mary M. Rowland
d/b/a MARIANO'S,)	
)	
Defendant.)	

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Defendant Roundy's Illinois, LLC d/b/a Mariano's ("Defendant," "Mariano's," or the "Company"), pursuant to Fed. R. Civ. P. 56, respectfully moves this Court for the entry of summary judgment in its favor and against the Plaintiff, on all claims asserted in Plaintiff's Amended Complaint (Dkt. No. 22). In support of this motion, Mariano's states as follows:

1. Summary judgment is appropriate where, as here, "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a).

2. Mariano's is entitled to summary judgment as a matter of law in this § 1981 discrimination, hostile work environment, and retaliation case because the undisputed material facts show:

- a. Plaintiff cannot state a *prima facie* case of employment discrimination – nor can Plaintiff establish that Mariano's legitimate, non-discriminatory reason for its decision to terminate Plaintiff's employment (due to his adverse criminal background check results) was pretext for unlawful discrimination;
- b. The allegedly harassing conduct of which Plaintiff complains was neither severe nor pervasive – and there would be no basis to impose liability on Mariano's under *Faragher-Ellerth* in any event; and

- c. Plaintiff's alleged request for a promotion does not constitute protected activity, and there is no causal nexus between his alleged promotion request and the termination of his employment.

3. In further support of this Motion, and pursuant to Local Rule 56.1(a), Mariano's hereby submits and incorporates by reference the facts, arguments, and authorities set forth in its accompanying: (a) Memorandum of Law; and (b) Separate Statement of Undisputed Facts (and Appendix of Exhibits thereto), all filed contemporaneously herewith.

WHEREFORE, for all of the reasons set forth above and in Defendant's supporting Memorandum of Law and Separate Statement of Undisputed Facts, Defendant Roundy's Illinois, LLC d/b/a Mariano's respectfully requests that this Court enter an Order:

- A. Granting summary judgment in favor of Defendant and against Plaintiff on all claims asserted in the Amended Complaint; and
- B. Awarding to Defendant any such other and further relief as this Court deems just.

Dated: April 28, 2023

Respectfully submitted,

**ROUNDY'S ILLINOIS, LLC, d/b/a
MARIANO'S, Defendant**

By: /s/ Christopher S. Griesmeyer

One of Its Attorneys

Christopher S. Griesmeyer (ARDC No. 6269851)

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on April 28, 2023, a copy of the foregoing *Defendant's Motion for Summary Judgment*, was filed with the Court's CM/ECF system, which will provide notice to all parties registered to receive notices. I further certify that a copy of the foregoing has been sent to the Plaintiff at the addresses listed below via U.S. mail, before the 5:00 p.m. on April 28, 2023:

Brandon Rudolph-Kimble
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&

Brandon Rudolph-Kimble
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/s/ Christopher S. Griesmeyer
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